

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA

v.

JAMES CRUZ, et al.,

Defendant

Criminal No. 96-76-P-C

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER DENYING
DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

Before the Court for action at this time is Defendant's Motion to Suppress Evidence (Docket No. 23). The issue has now been refined by agreement of counsel to a simple one: the propriety of a "pat-down" search of Defendant Cruz, in the circumstances in which it occurred, which led to the discovery of a hypodermic syringe and needle in his left pants pocket and Defendant's arrest for possession thereof. The motion seeks the suppression of all evidence found and seized after the occurrence of the arrest.

The circumstances are as follows. Maine State Trooper Flint, a trooper with fifteen years patrol experience, was on duty in his cruiser at 1:20 a.m. on August 23, 1996, on the Maine Turnpike. At that time, he observed Defendant's vehicle

proceeding south at a high rate of speed and obtained a radar verification of its speed as 88 miles per hour. The speed limit at that location was 65 miles per hour. Trooper Flint commenced pursuit of Defendant's vehicle, and the vehicle came to a stop in the breakdown lane four-tenths of a mile down the road. It pulled over and stopped abruptly before Trooper Flint activated his blue lights, which, from his experience, alerted him to the possibility, inter alia, that the occupants of the vehicle were hiding something inside it. This possibility, he thought, was given further support by the exaggerated level of movement of the occupants of the car as it came to a stop, particularly those of the passenger in the right front seat. Flint could observe that there were at least four occupants of the vehicle. He later learned that there was also a fifth occupant, a fourteen-year-old boy.

Trooper Flint approached the open driver's side window of the stopped vehicle. The driver of the vehicle apologized to Flint for speeding. Flint asked the driver, who proved to be the Defendant, to get out of the car and join him at the back of it. Defendant did so. Trooper Flint noticed that Defendant's shirttail was outside of his pants. He could not see Defendant's belt line. He asked Defendant if he had any weapons. Defendant said that he did not. Flint asked Defendant to raise his shirttail and turn around. Defendant did so. Flint saw no weapons in or attached to Defendant's waistband. He reached out and "patted" the outside of Defendant's right front pants pocket.

He felt a hard object, three to five inches long, that he thought could be a weapon. He asked Defendant to remove it. Defendant removed a pocket knife and gave it to Trooper Flint on his demand. Flint put the knife in his own pocket and then "patted" the outside of Defendant's left front pants pocket, feeling, as he did so, a similar item inside the pocket. He asked Defendant to remove it. Defendant removed a hypodermic syringe and needle from that pocket.

Trooper Flint placed Defendant under arrest for illegal possession of drug paraphernalia. 17-A M.R.S.A. § 1111 (1964). He asked Defendant if he had diabetes. Defendant replied that he did. Flint asked if he had his insulin with him. Defendant answered that he did not. Flint put Defendant in the right front seat of his police cruiser and called for backup. The events following the arrest of Defendant led to the acquisition of significant evidence that gives rise to one or more of the charges made against Defendant in the pending indictment herein.

Defense counsel has framed the issue, which Defendant seeks to present very narrowly: whether once Trooper Flint had gotten Defendant out of his car¹ he had any reasonable basis to justify a "pat-down" search of Defendant's pants pocket.²

¹Defendant does not challenge Trooper Flint's action in requiring him to exit the car. See Pennsylvania v. Mimms, 434 U.S. 106 (1977).

²Nor does Defendant challenge the existence of probable cause to arrest Defendant for possession of drug paraphernalia once Trooper Flint saw the hypodermic syringe and needle.

(continued...)

DISCUSSION

Defendant asserts that Trooper Flint's continued detention of Defendant, beyond his initial stop of the vehicle and questioning regarding the vehicle's speed, was unreasonable. In assessing the reasonableness of the Terry stop, the Court must examine the "totality of the circumstances confronting the police officer at the time of the stop." United States v. Trullo, 809 F.2d 108, 111 (1st Cir. 1987), cert. denied, 482 U.S. 916 (1987). The Court must then determine "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." Terry v. Ohio, 392 U.S. 1, 20 (1968).

The level of an officer's suspicion, and the source of such suspicion, does not remain fixed throughout an encounter; instead, the level of suspicion may be increased or diminished, and the source or objects of suspicion changed, by the unfolding of specific events and the continuing development of information during the course of an investigatory stop. United States v. Zapata, 18 F.3d 971, 974 (1st Cir. 1994).

Analysis of these facts begins on the major premise that Trooper Flint had a legitimate right, in the interests of

²(...continued)
Defendant contends that it is the allegedly unfounded pat-down search that led to the justification for the arrest of Defendant and to the resulting discovery of incriminating evidence. Defendant asserts that the search being invalid, the evidence discovered as a result of it must be suppressed. Wong Sun v. United States, 371 U.S. 471, 485-86 (1963).

preserving his own safety, to require that Defendant exit the vehicle and stand to its rear for further questioning.

Pennsylvania v. Mimms, 434 U.S. 106 (1977); see also Maryland v. Wilson, 1997 WL 65726 (1997). Once Defendant did so, the officer's safety concerns were not ameliorated because Defendant's person, with his loose, untucked shirttail, prevented the officer from establishing that Defendant had no weapons on his person. Trooper Flint continued to have a need to establish that as fact, and it would have been foolhardy, under the circumstances, for him to continue his processing of Defendant for the speeding offense without doing so.

The Court finds that he pursued that investigatory purpose with promptitude and in a thoroughly reasonable manner in the circumstances in which he found himself. He did this without touching the Defendant, by requesting that Defendant lift his shirttail to display his waistband area and turn so that Flint could see that area of his sides and back. Satisfied that Defendant had no weapon concealed in that area of his body, Trooper Flint reached out and patted Defendant's most accessible, the front, pants pockets, where a weapon might be concealed. He did so without reaching into Defendant's clothing.

The Court is fully satisfied and does find that Trooper Flint pursued his legitimate investigatory purpose of protecting himself from attack with a dangerous weapon by a course of investigatory conduct that was well within the scope of reasonableness in the circumstances.

Accordingly, it is hereby ORDERED that Defendant's Motion to Suppress Evidence be, and it is hereby, DENIED.

GENE CARTER
District Judge

Dated at Portland, Maine this 21st day of February, 1997.